

**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

IN THE MATTER OF ENFORCEMENT) ACTION AGAINST)) American Cancer Society) Northwest States, Great West Division)) Respondent.) _____)	PDC CASE NO: 04-446 STIPULATION OF FACTS VIOLATIONS AND PENALTY
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The American Cancer Society, Northwest States, Great West Division (Respondent) and the Public Disclosure Commission Staff (Staff) jointly submit this Stipulation of Facts, Violations and Penalty for the Commission's consideration at the June 9, 2005 meeting in lieu of a full enforcement hearing before the Commission. The parties agree that, pursuant to RCW 42.17.360, the Commission has the authority to accept, decline, or to suggest modifications to this Stipulation. In the interest of avoiding further proceedings, the parties enter this Stipulation.

Facts

1. On January 12, 2004, companion bills HB 1868 and SB 5791 were introduced into the 2004 Washington State Legislature. The proposed legislation acted to ban smoking in public places, including bars, taverns, and bowling alleys, and to repeal sections of state law which formerly permitted the designation of smoking and non-smoking areas in public places. The legislation also allowed local government to adopt more restrictive ordinances to further restrict smoking in public places. HB 1868 and SB 5791 failed to pass during the 2004 legislative session.
2. In January of 2004, advertisements presenting a program addressed to the public, a substantial portion of which was intended, designed or calculated primarily to influence state legislation were aired on television stations in Washington State. These expenses were "grass roots lobbying expenses" and were required to be

reported on PDC form L-6 within thirty days after the start of the campaign, which began January 12, 2004 and continued through February 29, 2004 at a cost of \$48,600. Of this total, January television expenses totaled \$11,250 and February television expenses totaled \$37,350. Some of the advertisements, which featured former U.S. Surgeon General C. Everett Coop, stated that they had been sponsored by the Washington BREATHE Alliance, a reference to a loose knit umbrella group of five like minded health organizations, including the American Cancer Society, who shared a common interest of eliminating second-hand smoke in all indoor public places. The American Cancer Society paid for the television ads and had an obligation to report the expenses.

3. The ads, known as the "C. Everett Koop television ads" that aired during the 2004 legislative session were addressed to the public, and were intended, designed or calculated primarily to influence state legislation, by encouraging public support of HB 1868 and SB 5791. There were four versions of the ads. Three versions of the ads constituted reportable grass roots lobbying, and cost \$48,600. The text of the three ads are stated below:

- The "It's Time to Act" ad stated, *"Secondhand smoke is a killer. There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places. We protect office workers from toxic smoke. Why not protect all workers. Everyone has the right to breathe clean indoor air. ...and the fact is it's good for business, revenues go up, jobs are created as more people go out to enjoy smokefree places. It's time for our leaders to act. It's your right."*
- The "It's Your Right" ad stated, *"Secondhand smoke is a killer. There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places. We protect office workers from toxic smoke. Why not protect all workers."*

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Everyone has the right to breathe clean indoor air. ...and the fact is it's good for business, revenues go up, jobs are created as more people go out to enjoy smokefree places. Smokefree. It's your right."

- The "Hotline" ad stated, *"Secondhand smoke is a killer. There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places. We protect office workers from toxic smoke. Why not protect all workers. Everyone has the right to breathe clean indoor air. ...and the fact is it's good for business, revenues go up, jobs are created as more people go out to enjoy smokefree places. Call the legislature. Demand smokefree indoor public places."*

The *"It's Your Right"* ad ran 11 times in January and 26 times in February. At the same time, the *"It's Time to Act"* ad ran 39 times in January and 78 times in February. In addition, the *"Hotline"* ad ran 62 times in February. Thus, two of the ads ran at the same time in January, and all three ran at the same time in February. The ads ran as a group and by virtue of their content and timing, were intended to influence state legislation, HB 1868 and SB 5791.

4. David Delvallee, Advocacy Director for the American Cancer Society, acknowledged by letter and on PDC form L-6 that in addition to the television ads, the American Cancer Society spent \$10,874 in January 2004 and \$4,721 in February 2004 on grass roots lobbying expenses, primarily for brochures, signs, printing and consultants.
5. The American Cancer Society received \$15,000 from the American Lung Association of Washington and \$15,000 from the American Heart Association in February 2004 to help pay for its grass roots lobbying expenditures. However, the L-6 reports originally filed by the American Cancer Society did not list the receipt of any contributions to help pay for the grass roots lobbying expenses. Kevin Knox, an employee of the American Cancer Society, acknowledged receipt of the contributions

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for the purpose of supporting the grass roots lobbying efforts of the American Cancer Society and reported receipt of the contributions by letter 153 days late on August 10, 2004.

Late Reported Contributions for Initiative 901

6. In addition to the grass roots lobbying activities described above, the American Cancer Society has filed late reports identifying contributions made to Healthy Indoor Air for All Washington, a statewide initiative committee that is currently gathering signatures in an effort to qualify Initiative 901 for the November 8, 2005 ballot.
7. The American Cancer Society reported \$35,000 in monetary contributions and \$9,357 as in-kind contributions, for a total of \$44,357, between 41 and 105 days late on lobbying reporting forms.

<u>Type of Contribution</u>	<u>Amount</u>	<u>Date of Contribution</u>	<u>Due</u>	<u>Filed</u>	<u>Days Late</u>
Monetary	\$25,000	11/22/04	12/15/04	1/25/05 (L-2) *	41
Monetary	\$10,000	2/28/05	3/15/05	5/31/05 (L-3C)	77
In Kind	\$ 758	1/31/05	2/15/05	5/31/05 (L-3C)	105
In Kind	\$ 5,818	2/28/05	3/15/05	5/31/05 (L-3C)	77
In Kind	\$ 2,781	3/31/05	4/15/05	5/31/05 (L-3C)	46
Total	\$44,357				(41 - 105)

* Contributions made by a lobbyist employer may be reported by the lobbyist on PDC form L-2 in lieu of being reported by the employer on PDC form L-3C.

8. No evidence was found that the American Cancer Society's actions described in the stipulation were done to intentionally hide or conceal its activities.

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Violations

Respondent and Staff agree that based upon the facts stipulated above in Paragraphs 1 through 5, the Respondent committed multiple violations of RCW 42.17.200 as follows:

- By failing to timely report American Cancer Society's grass roots lobbying expenses totaling \$64,195 for January and February 2004 as follows:
 - January 2004 grass roots lobbying expenses totaling \$22,124 that were filed 70 days late on April 22, 2004. The expenditures included \$11,250 for television expenses and \$10,874 for brochures, signs, printing, mailing, consultants, salaries, travel and office expenses.
 - February 2004 grass roots lobbying expenses totaling \$42,071 that were filed 43 days late on April 22, 2004. The expenditures included \$37,350 for television expenses and \$4,721 for consultants, office expenses, travel and salaries.
- By failing to timely report American Cancer Society's receipt of \$15,000 from the American Lung Association of Washington and \$15,000 from the American Heart Association as contributions to help pay for the grass roots lobbying expenditures of the American Cancer Society. The expenditures were reported 153 days late on August 10, 2004.

Respondent and Staff further agree that based upon the facts stipulated above in Paragraphs 6 and 7, the Respondent committed multiple violations of RCW 42.17.180 as follows:

- By failing to timely report making monetary and in-kind contributions totaling \$44,357 to Healthy Indoor Air for All Washington between November 22, 2004 and March 31, 2005.

Penalty

Respondent and staff agree to the following penalty and terms based on the stipulation of facts and violations of RCW 42.17 detailed above:

- A civil penalty of \$7,500. \$4,000 of this penalty will be suspended based on compliance with the following conditions:

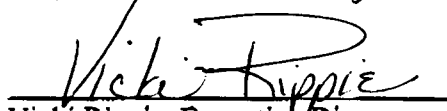
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- The Respondent meets with PDC staff within 30 days following the end of each calendar quarter through December 31, 2006 to review its PDC filings.
- The Respondent hosts a training class prior to January 1, 2006 for American Cancer Society officials and their invitees taught by PDC staff on PDC reporting responsibilities pursuant to Chapter 42.17 RCW.
- The Respondent commits no further violations of Chapter 42.17 RCW for a period of four years from the date of entry of the Final Order as determined by the full Commission.

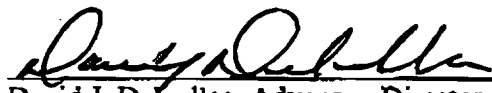
The Respondent agrees to pay the entire \$3,500 non-suspended portion of the penalty within 60 days from the date of entry of the Commission's Final Order.

The Respondent agrees to comply fully in good faith with all provisions of Chapter 42.17 RCW in the future.

Respectfully submitted this 2nd day of June, 2005.


Vicki Rippie, Executive Director

6/2/05
Date


David J. Delvallee, Advocacy Director
American Cancer Society,
Northwest States, Great West Division

6-2-05
Date

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